IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 1133 of 2004.

Judgment reserved on: 29.4.2008

Date of Decision: May 7, 2008

Ms. Maya Singh ….. Petitioner

Versus

State of HP & Ors. … Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting? yes

For the Petitioner(s) : Mr. Ajay Sharma, Advocate.

For the Respondent(s) : Mr. Rajesh Mandhotra, Deputy Advocate General.

Deepak Gupta, J,

By means of this writ petition, the petitioner has challenged the order of the learned H.P. State Administrative Tribunal passed in OA No. 2105 of 1999 rejecting her claim for grant of family pension.

Briefly stated the facts necessary for decision of the case are that the petitioner's husband Dr. Ramakant Singh was appointed as doctor on contract basis vide letter No.Health-B(2)14/77(Loose) dated 05.02.1986. The relevant portions of the said letter read as follows:-

" xxxxx xxxx xxx xxx xxx

2. The appointee will also be entitled to draw dearness and other allowances at the rates admissible.

3. The terms and conditions of the contract appointment are as follows:-

(i) xxx

(ii) xxx

(iii) xxx

(iv) xxx

(v) During the service period, he /she will be given regular scale will earn regular increments and will be entitled to all allowances which are admissible to regularly appointed GDO-II. He/she will earn Leave like other government employees and will be governed under the normal leave rules.

(vi) He/she will be governed by the rules and orders enforce from time to time as applicable to other government servants except the temporary service rules, 1965.

(vii) xxxx

(viii) He/she will be allowed to contribute towards GP Fund.

(ix) xxxx

(x) xxxx

(xi) He/she will be governed by Central Rules such as CCA Rules, 1961 and Conduct Rules, 1964 as are applicable in Himachal Pradesh."

Unfortunately, Dr. Ramakant Singh expired. Thereafter the petitioner being his widow submitted her claim that family pension be granted to her in terms of Central Civil Services(Pension) Rules. This claim was rejected on the basis of Rule 2(g) of the Pension Rules which reads as follows:-

"2. Application:

Save as otherwise provided in these rules, these rules shall apply to Government servants including civilian Government servants in the Defence Services, appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments but shall not apply to:-

(a) xxx

(b) xx
(c) xx
(d) xxx
(e) xx
(f) xx
(g) Persons employed on contract except when the contract provides otherwise; and
(h) xxx

Thereafter the present petitioner filed Original Application which was rejected by the learned Tribunal and hence the present writ petition.

We have heard Shri Ajay Sharma learned counsel for the petitioner and Shri Rajesh Mandhotra, learned Deputy Advocate General for the respondents.

The main thrust of the argument made on behalf of the petitioner by Shri Ajay Sharma is that in terms of sub-clause (vi) of Clause 3 of the letter of appointment Dr. Ramakant Singh was to be governed by all rules and orders enforced from time to time and applicable to all other government servants except the Temporary Service rules, 1965. it is further submitted that in terms of sub clause (xi), it was made clear that the appointee would be governed by all Central Rules including CCA and Conduct Rules. Therefore, it is submitted that the deceased was governed by the Pension Rules and his widow would be entitled to Family Pension.

Rule 2(g) of the Pension Rules quoted above clearly lays down that the persons appointed on contract are not entitled to pension except when the contract provides for otherwise. The pension rules are also Central Rules. Even if, we accept the argument made on behalf of the petitioner that the pension rules are applicable, then Rule 2(g) is also applicable which specifically states that pension would not be payable to persons appointed on contract unless otherwise provided for. This rule excludes the grant of pension to a person appointed on contract except when the contract provides otherwise. There is no specific stipulation in the contract that the appointee was entitled to pension.

In our opinion, in case the intention was to grant pension to the appointee, there should have been specific stipulation to this effect in the contract. This cannot be read by inference. In our opinion, the learned Tribunal rightly decided the matter and the order of the learned Tribunal calls for no interference.

The petition is accordingly rejected with no order as to costs.

(Deepak Gupta),J.

May 7, 2008

(Kuldip Singh),J.

s.